

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>MIDAMERICAN ENERGY COMPANY | DOCKET NO. DRU-03-3 |
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**DECLARATORY ORDER**

(Issued June 6, 2003)

On May 13, 2003, MidAmerican Energy Company (MidAmerican) filed with the Utilities Board (Board) a petition for declaratory order. MidAmerican plans to build in Iowa a wind generation project consisting of approximately 173 to 207 wind turbine generators with a maximum nameplate generating capacity of 1.5 megawatts (MW) to 1.8 MW each, for a total project nameplate capacity of approximately 310 MW. MidAmerican states that each of the turbines will operate on a stand-alone basis producing electricity independent of the operation of any other turbine. The output of the individual turbines will be collected through a network of collector lines expected to operate at 34.5 kV or below. None of the collector or "gathering" lines will carry more than 25 MW of generation capacity. The question presented by MidAmerican is whether it is required, pursuant to Iowa Code Chapter 476A, to obtain a certificate of public convenience, use, and necessity prior to commencing construction on its wind facility, as long as the project is designed and constructed in such a manner such that no single collector or gathering line will be connected to 25 MW or more of nameplate generating capacity.

MidAmerican filed a request for an informal meeting with the Board's staff pursuant to 199 IAC 4.7 on May 22, 2003. The meeting, which included representatives from the Consumer Advocate Division of the Department of Justice, was held on May 30, 2003. In its request, MidAmerican noted that the determination of the exact site for the wind project would not be made for several weeks or months. MidAmerican also said that the wind generation will likely be installed at various locations rather than in a single general area. Each location probably will have approximately 80 MW to 150 MW of capacity. While the individual locations will contain several collector or gathering lines, no collector or gathering line will carry more than 25 MW of capacity. No objections to the request for declaratory order were filed.

Iowa Code § 476A.2 provides "a person shall not commence to construct a facility except as provided in section 476A.9 unless a certificate for the facility has been issued by the board." The statute the Board has been asked to construe is Iowa Code § 476A.1(5). This section defines "facility" as follows:

"Facility" means any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected transmission system or both. Transmission lines subject to the provisions of this sub chapter shall not require a franchise under chapter 478.

In addition, Iowa Code § 476A.15 gives the Board the authority to waive any of the requirements of Chapter 476A if the Board determines that the public interest would not be adversely affected by the waiver.

The facts concerning the project are recited in the petition for declaratory ruling. While no locations are specified, there will be approximately 173 to 207 wind turbines with a maximum nameplate capacity of 1.5 to 1.8 MW, for a total nameplate capacity of 310 MW. For each 100 MW of the project, approximately 25 acres of surface property will be impacted. Because the individual wind turbine generating units are dispersed, the output of each unit will be collected through a network of collector or "gathering" lines. MidAmerican bases its request on the fact that no more than 25 MW of generating capacity will be located on any single collector or "gathering" line. Therefore, MidAmerican argues that no single facility or site will contain more than the 25 MW statutory threshold.

The Board has previously ruled on similar requests for declaratory ruling, most recently in In Re: Flying Cloud Power Partners, L.L.C., Docket No. DRU-03-2 (2/10/03). In those rulings, the Board found that the term "facility" as defined in Iowa Code § 476A.1(5) refers to "wind turbines connected to a single gathering line." The Board's ruling was consistent with Reid v. Iowa State Commerce Comm'n, 357 N.W.2d 588 (Iowa 1984). This case involved a single 150 MW generating plant that had already been added at the site of an existing 124 MW plant. The operating utility sought permission from the Commerce Commission (the Board's predecessor) to open and operate a landfill for the disposal of coal combustion residue at a farm six miles away. The Commission granted the certificate, finding the landfill was an essential component of the generating plant.

On appeal, the issue concerned the definition of "facility" as used in Iowa Code § 476A.1 and, in particular, whether the words "at a single site" modify the term

"any electric power generating plant" as well as the term "a combination of plants." The Court said the phrase modified only the term "a combination of plants." While the Court, therefore, never directly addressed the question of the proper application of the single site requirement, the implication was that a landfill located six miles away from the generating plant would not have met the single site requirement if it had applied.

The Federal Energy Regulatory Commission (FERC) provides that a qualifying small power production facility, located at any one site, cannot exceed 80 MW. In determining what is a single site, FERC considers everything within a one-mile radius as part of the site. 18 CFR 292.204(a)(2). The FERC rules demonstrate another agency has limited the definition of "site" so a single site does not encompass tens of square miles of wind turbines.

In addition to the legal precedent cited above, the purposes behind and the interplay between Chapters 476A and 476 must be examined. Chapter 476A generally requires any person to acquire a generating certificate for a facility of 25 MW or more at a single site. The Board has the authority, if the public interest is not adversely affected, to waive the statutory requirements such that a generating certificate would not have to be obtained. This waiver authority now applies to facilities of any size. Previously, the waiver authority only applied to facilities of 100 MW or less. A certificate proceeding is a contested case proceeding. Generally, these proceedings take a minimum of six months.

The decision criteria for a certificate proceeding case are found in Iowa Code § 476A.6. The three criteria are: 1) construction consistent with Iowa Code § 476.53

and the economic development policy of the state and services and operations that will not be detrimental to the provision of adequate and reliable electric service; 2) willingness to construct and operate pursuant to the terms of the certificate; and 3) construction and operation consistent with reasonable land use and environmental policies. The legislature has stated that the public policy of this state is "to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use." Iowa Code § 476.41. In addition, Iowa Code § 476.53 states that it is the intent of the general assembly to attract electric power generating facilities to the state. The jobs and tax revenue created by MidAmerican's project are consistent with the state's economic development policies.

The other aspect of the first factor is that the project not be detrimental to the provision of adequate and reliable electric service. Under this factor, the Board focuses on the impact the generation project has on the transmission system. It is crucial that here MidAmerican bases its request on its commitment "that the project will go forward only under the condition that it will not have any significant detrimental impact on the transmission system." (Petition, p. 2). In addition, MidAmerican commits to "obtain all appropriate transmission interconnection, transmission service and other transmission related authorizations currently and prospectively required prior to operating the project on the transmission system." (Id.) Because MidAmerican has committed to obtain the requisite transmission approvals, any concerns about detrimental impact on the transmission system are satisfied.

With respect to the second factor, MidAmerican's willingness to perform will be evidenced by its construction of the wind project. If MidAmerican fails to construct the facility, its rate base will be affected.

The final criteria relates to environmental and land use factors. The Board has generally deferred to findings by the Iowa Department of Natural Resources and local authorities on environmental and other permit issues. MidAmerican will have to obtain any necessary environmental or other permits from the appropriate state or local bodies.

As it did in prior requests for declaratory order, the Board determines that the term "facility" refers to the wind turbines connected to a common gathering line at a single site. According to the petition, no more than 25 MW of generating capacity will be connected to a single gathering line. Therefore, the 25 MW threshold of Chapter 476A is not met and no siting or generation certificate must be obtained from the Board prior to MidAmerican commencing construction. MidAmerican is exempt from the certification requirements of Chapter 476A under the facts recited in the petition.

The Board's construction is based, in part, on the interplay between Chapter 476A and the legislative policy embodied in Iowa Code § 476.41. Because of this legislative policy, any Board determinations required under Chapter 476A have already been made or are appropriately deferred to another regulatory body. If these projects did not involve renewable or alternate energy, the Board's construction may have been different. While MidAmerican's project is significantly larger than other projects that requested a declaratory order, the analysis is the same. Any concerns

about impacts on the transmission system are satisfied by MidAmerican's commitments.

**IT IS THEREFORE ORDERED:**

The petition for declaratory order filed by MidAmerican Energy Company on May 13, 2003, as supplemented by information contained in its May 22, 2003, filing, is granted to the extent discussed in this order.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 6<sup>th</sup> day of June, 2003.